

10/2/09

**COMMISSIONERS**  
 KRISTIN K. MAYES, Chairman  
 GARY PIERCE  
 PAUL NEWMAN  
 SANDRA D. KENNEDY  
 BOB STUMP

ERNEST G. JOHNSON  
 EXECUTIVE DIRECTOR



0000103027

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## ARIZONA CORPORATION COMMISSION

ORIGINAL

## MEMORANDUM

**TO:** Kristin K. Mayes, Chairman  
 Gary Pierce  
 Paul Newman  
 Sandra D. Kennedy  
 Bob Stump

Arizona Corporation Commission

DOCKETED

SEP 25 2009

**FROM:** Mark Dinell *MD*  
 Assistant Director of Securities

DOCKETED BY

*MD*

**DATE:** September 18, 2009

**RE:** Proposed settlement with Phil Vigarino a Defendant in *Arizona Corporation Commission v. American National Mortgage Partners, L.L.C. et al.*, CV2003-005724 (Docket No. S-03491A-02-0000)

**CC:** Ernest G. Johnson, Executive Director

On March 25, 2003, the Commission filed a civil matter against American National Mortgage Partners, L.L.C.<sup>1</sup> et al. ("ANMP") including Phil Vigarino, in Maricopa County Superior Court. The Commission sought and obtained a Receiver to take control of the companies and assets of ANMP et al.

Phil Vigarino was a salesman for ANMP and its predecessor company, Creative Financial Funding, L.L.C. (Docket No. S-003469A-01-0000). Vigarino was named in the Temporary Cease and Desist Order filed on September 5, 2002 against ANMP and other entities and individuals.

Vigarino was indicted by a Federal Grand Jury on December 18, 2007 for Conspiracy to commit mail fraud related to ANMP. The criminal trial is set for January 20, 2010.

Vigarino has agreed to the proposed settlement with the Commission attached to this memorandum. Vigarino agrees to a permanent injunction from violating the Arizona Securities Act. Vigarino will pay a restitution amount of \$440,000. Vigarino will pay a civil penalty of \$20,000. In addition, Vigarino agrees to pay a penalty for contempt of a prior Commission Order in the amount of \$20,000.

<sup>1</sup> There were nine individual defendants and 112 entities named in *ACC v. American National Mortgage Partners LLC et al.*, Maricopa County Superior Court, CV2003-005724.

September 18, 2009

Page 2 of 2

This settlement would resolve the matter between the Commission and Defendant Phil Vigarino, including the stayed administrative matter filed on September 5, 2002, Docket No. S-03491A-02-0000.

(originator W. Coy)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

6 In the matter of: ) Docket No. S-03491A-02-0000  
7 )  
8 PHIL VIGARINO ) **SETTLEMENT AGREEMENT AND**  
9 ) **ORDER RE: SAME BY: PHIL VIGARINO**  
Respondent. ) **DECISION NO. \_\_\_\_\_**

10 **I. SETTLEMENT AGREEMENT.**

11 1. Plaintiff, the Arizona Corporation Commission ("Commission"), and Defendant  
12 Phil Vigarino ("Vigarino"), parties in the case of *Arizona Corporation Commission v. American*  
13 *National Mortgage Partners L.L.C. et al.*, Maricopa County Superior Court No. CV2003-005724  
14 (the "lawsuit"), desire to resolve the portion of the lawsuit involving them and thus enter into this  
15 Settlement Agreement ("Agreement"). Trica Vigarino was dismissed from this action on  
16 September 22, 2006.

17 2. In settlement of the lawsuit, Vigarino elects to permanently waive his right to a trial  
18 of the lawsuit. Vigarino admits the jurisdiction of the Superior Court over the subject matter of  
19 this lawsuit.

20 3. Vigarino consents to the entry of the Proposed Judgment attached as Exhibit B to  
21 this Agreement.

22 4. Vigarino neither admits nor denies that he offered and sold interests through ANMP  
23 while the interests were not registered and Vigarino was not registered to offer and sell securities  
24 violating A.R.S. §§ 44-1841, 1842 and 44-2032.

25 5. Vigarino neither admits nor denies that he violated A.R.S. §44-1991, either directly  
26 or indirectly, when he offered and sold interest through ANMP. The Commission alleges that

1 Vigarino employed devices, schemes or artifices to defraud, made untrue statements of material fact  
2 or omitted to state material facts which were necessary in order to make the statements made not  
3 misleading in light of the circumstances under which they were made and/or engaged in any  
4 transaction, practice or course of business which operated or would operate as a fraud or deceit when  
5 Vigarino offered and sold interests in ANMP.

6 6. Vigarino was the subject of a Temporary Cease and Desist Order issued on  
7 September 5, 2002, Docket No. S-03491A-02-0000.

8 7. Vigarino, pursuant to A.R.S. § 44-2032, agrees that he is to be permanently  
9 enjoined from violating the Securities Act.

10 8. Vigarino agrees to entry of judgment against him of \$440,000 in restitution.

11 9. Vigarino agrees that the funds paid for restitution will be turned over to the  
12 Receiver assigned to this matter and will be used to fund restitution to investors. If at the time  
13 Vigarino pays the restitution amount, the Receiver has already fully repaid investors for their  
14 losses, Vigarino's repayment would then go to the state of Arizona general fund.

15 10. Pursuant to A.R.S. § 44-2037, Vigarino is ordered to pay a civil penalty of \$20,000.

16 11. Pursuant to A.R.S. § 44-2032(1)(a), Vigarino is ordered to pay \$20,000 for  
17 contempt of a Temporary Cease and Desist Order, issued on September 5, 2002, Docket No. S-  
18 03491A-02-0000, related to the same activities.

19 12. Vigarino acknowledges that he has been fully advised of his right to a trial to  
20 present evidence and call witnesses and Vigarino knowingly and voluntarily waives any and all  
21 rights to a trial of this matter.

22 13. Vigarino knowingly and voluntarily waives any right he may have under to judicial  
23 review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of  
24 Exhibit B, the proposed judgment.

25 14. Vigarino acknowledges and agrees that this Agreement is entered into freely and  
26 voluntarily and that no promise was made or coercion used to induce such entry.

1           15. Vigarino understands and acknowledges that he has a right to seek counsel  
2 regarding this Settlement Agreement, and that he has had the opportunity to seek counsel prior to  
3 signing this Settlement Agreement. Vigarino acknowledges and agrees that, despite the foregoing,  
4 he freely and voluntarily waives any and all right to consult or obtain counsel prior to signing this  
5 Settlement Agreement.

6           16. By consenting to the entry of the Judgment, Vigarino agrees to refrain from taking  
7 any action or to making, or permitting to be made, any public statement denying, directly or  
8 indirectly, or calculated to create the impression that the legal conclusions contained in Paragraphs  
9 4, 5 and 6 of the Agreement are without merit. Nothing in this paragraph shall preclude Vigarino  
10 from defending himself or testifying in any administrative, civil or criminal proceedings to which  
11 the Commission is not a party.

12           17. While this Order settles the lawsuit between Vigarino and the Commission,  
13 Vigarino understands that this Order does not preclude the Commission from instituting other  
14 administrative or civil proceedings based on violations that are not addressed by the lawsuit.

15           18. Vigarino understands that this Agreement does not preclude the Commission from  
16 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
17 that may be related to the matters addressed by the lawsuit.

18           19. Vigarino understands that this Agreement does not preclude any other agency or  
19 officer of any governmental agency or its subdivisions from instituting administrative, civil or  
20 criminal proceedings that may be related to matters addressed by this Agreement or the lawsuit.

21           20. Vigarino agrees that he will not apply to the state of Arizona for registration as a  
22 securities dealer or salesman or for licensure as an investment adviser or investment adviser  
23 representative at any time in the future.

24           21. Vigarino agrees that he will not exercise any control over any entity that offers or  
25 sells securities or provides investment advisory services within or from Arizona at any time in the  
26 future.

1           22.     Vigarino agrees that he will not sell any securities in or from Arizona without being  
2 properly registered in Arizona as a dealer or salesman, or exempt from such registration;  
3 Respondent will not sell any securities in or from Arizona unless the securities are registered in  
4 Arizona or exempt from registration; and he will not transact business in Arizona as an investment  
5 adviser or an investment adviser representative unless properly licensed in Arizona or exempt from  
6 licensure.

7           23.     Vigarino understands that default shall render him liable to the Commission for its  
8 costs of collection and interest at the legal rate determined by law.

9           24.     Vigarino agrees that he will cooperate with the Securities Division and the Receiver  
10 in any related investigation or any other matters arising from the activities described in the lawsuit.  
11 Nothing in this paragraph shall preclude Vigarino from asserting his constitutional rights.

12           25.     Vigarino agrees not to challenge the imposition or continuation of the Receivership.  
13 Reasonable inquiries into the amount and nature of fees requested by the Receiver and/or their  
14 counsel shall not be deemed a challenge to the imposition or continuation of the Receivership.

15           26.     Each party shall bear its own attorneys' fees and costs.

16           27.     Vigarino acknowledges that this Agreement must be approved by the Commission  
17 at a noticed Open Meeting.

18           28.     The Commission and Vigarino agree that upon approval of this Agreement, counsel  
19 for the Commission shall, as soon as practicable, execute and cause to be filed the attached  
20 Stipulation to Entry of Judgment (Exhibit A to this Agreement) and Judgment (Exhibit B to this  
21 Agreement).


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Phil Vigarino

Rachel Elbert  
NOTARY PUBLIC

6.22.2012



**II.****ORDER**

The Arizona Corporation Commission ("Commission") having reviewed the Settlement Agreement entered into between Phil Vigarino and the Securities Division of the Commission ("Division") and finding the Settlement Agreement to be in the public interest, the Commission finds that the following Order is appropriate and in the public interest:

IT IS ORDERED that the Settlement Agreement between the Commission and Vigarino is approved.

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IT IS FURTHER ORDERED that the Securities Division is authorized to dismiss Vigarino as a named Respondent In the Matter of American National Mortgage Partners, L.L.C. et al., Docket No. S-03491A-02-0000.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

**BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

***DISSENT***

***DISSENT***

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
(wc)

1 SERVICE LIST FOR: PHIL VIGARINO

2 Lawrence E. Wilk, Esq.  
3 Jaburg & Wilk, PC  
3200 N. Central Ave. 20<sup>th</sup> Fl  
4 Phoenix, Arizona 85012-2440

5 Michael Salcido  
6 Buckley King  
2020 North Central Avenue, Suite 1120  
Phoenix, Arizona 85004

7 Larry and Sheila Dunning  
8 2914 S. Ocean Blvd.  
Highland Beach, Florida 33487

9 Phil Vigarino  
41916 N 45<sup>th</sup> GLN  
10 Phoenix, Arizona 85086-1455

11 LaVelle & LaVelle, PLC  
2525 East Camelback Road, Suite 888  
12 Phoenix, Arizona 85016

13 Mark Kesler  
6638 West Rose Garden Lane  
14 Phoenix, Arizona 85308

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# EXHIBIT A

**ARIZONA CORPORATION COMMISSION**

Wendy Coy, #013195  
 1300 West Washington, 3<sup>rd</sup> Floor  
 Phoenix, Arizona 85007  
 Attorney for Plaintiff  
 Telephone: (602) 542-0633  
 Fax: (602) 594-7418  
 wcoy@azcc.gov

**STATE OF ARIZONA****MARICOPA COUNTY SUPERIOR COURT**

ARIZONA CORPORATION COMMISSION	)	No. CV2003 005724
	)	
Plaintiff	)	<b>STIPULATION FOR ENTRY OF</b>
	)	<b>JUDGMENT</b>
v.	)	
	)	<b>RE: PHIL VIGARINO</b>
AMERICAN NATIONAL MORTGAGE	)	
PARTNERS, L.L.C., et al.	)	(Assigned to the Honorable Douglas Rayes)
	)	
Defendants.	)	<b>DECISION NO. _____</b>

Plaintiff, the Arizona Corporation Commission and Defendant Phil Vigarino, hereby stipulate to entry of the attached Judgment.

Dated this \_\_\_\_\_ day of October, 2009.

ARIZONA CORPORATION COMMISSION

By \_\_\_\_\_  
 Wendy Coy  
 Attorney for the Arizona Corporation  
 Commission

Dated this \_\_\_\_\_ day of October, 2009.

By \_\_\_\_\_  
 Phil Vigarino

1 ORIGINAL of the foregoing e-filed  
2 this \_\_\_\_ day of October, 2009 with:

3 Clerk of the Maricopa County Superior Court

4 Copies of the foregoing mailed  
5 this \_\_\_\_ day of October, 2009 to:

6 Maricopa County Superior Court  
7 The Honorable Douglas Rayes  
8 101 West Jefferson, ECB Room 411  
9 Phoenix, Arizona 85003-2243

10 Copies of the foregoing mailed  
11 this \_\_\_\_ day of October, 2009 to:

12 Lawrence E. Wilk, Esq.  
13 Jaburg & Wilk, PC  
14 3200 N. Central Ave. 20<sup>th</sup> Fl  
15 Phoenix, Arizona 85012-2440  
16 *Attorney for Receiver*

17 Michael Salcido  
18 Buckley King  
19 2020 North Central Avenue, Suite 1120  
20 Phoenix, Arizona 85004  
21 *Attorney for Defendant Caspare*

22 Larry and Sheila Dunning  
23 2914 S. Ocean Blvd.  
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25 Phil Vigarino  
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Phoenix, Arizona 85086-1455

LaVelle & LaVelle, PLC  
2525 East Camelback Road, Suite 888  
Phoenix, Arizona 85016

Mark Kesler  
6638 West Rose Garden Lane  
Phoenix, Arizona 85308

/s/ Veronica Sandoval  
Legal Assistant, Securities Division

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## EXHIBIT B

**ARIZONA CORPORATION COMMISSION**

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 Phoenix, Arizona 85007  
 Attorney for Plaintiff  
 Telephone: (602) 542-0633  
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wcoy@azcc.gov

**STATE OF ARIZONA****MARICOPA COUNTY SUPERIOR COURT**

ARIZONA CORPORATION COMMISSION ) No. CV2003 005724

Plaintiff )

) **JUDGMENT**

v. )

) **RE: PHIL VIGARINO**AMERICAN NATIONAL MORTGAGE )  
 PARTNERS, L.L.C., et al. )

) (Assigned to the Honorable Douglas Rayes)

Defendants. )

) **DECISION NO.** \_\_\_\_\_

Upon stipulation of Plaintiff, the Arizona Corporation Commission ("Commission") and Defendant Phil Vigarino ("Vigarino") and good cause appearing:

IT IS HEREBY ORDERED pursuant to A.R.S. § 44-2032 Vigarino shall be permanently enjoined from violations of the Arizona Securities Act, A.R.S. § 44-1801 *et seq.*

IT IS FURTHER ORDERED that judgment shall be entered in favor of the Commission against Phil Vigarino in the amount of \$440,000 for restitution.

IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2037, civil penalty shall be imposed against Phil Vigarino in the amount of \$20,000.

IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2032, civil penalty for contempt of a prior Commission order shall be imposed against Phil Vigarino in the amount of \$20,000.

IT IS FURTHER ORDERED that the Commission and Vigarino shall bear their own attorneys' fees and costs.

1 IT IS FURTHER ORDRED that interest shall accrue on all damages at the legal rate of  
2 ten percent per annum from date of entry of this Judgment until fully paid.

3 IT IS FURTHER ORDERED that there is no just reason for delay and this judgment shall  
4 be entered immediately.

5 ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2009.

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7  
8 Honorable Douglas Rayes  
9 Judge of the Superior Court  
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